Majlis Perbandaran Subang Jaya v The Alice Smith Schools Association

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(I)-13 OF 2008(B)
JAMES FOONG, RAUS SHARIF AND HELILIAH FCJJ
9 DECEMBER 2010

Local Government — Rates — Annual value — Determination of annual value — Jabatan Perkhidmatan Harta Negeri Selangor ('JPPH') appointed as independent valuer to carry out valuation — Whether High Court erred in rejecting 'comparison method' and adopting 'contractor's test' in determining valuation — Whether High Court erred in rejecting JPPH's valuation in favour of valuation of private valuer — Whether High Court erred in disregarding express condition of land use imposed by state authority

Local Government — Rates — Annual value — Objection to proposed annual value — Determination of annual value — Whether High Court erred in rejecting 'comparison method' and adopting 'contractor's test' in determining valuation of holding

Local Government — Rates — Appeal — Rate of assessment — Appeal for reduction of annual value and rate of assessment — Respondent running private school — Jabatan Perkhidmatan Harta Negeri Selangor ('JPPH') appointed as independent valuer to carry out valuation — Whether High Court erred in rejecting 'comparison method' and adopting 'contractor's test' in determining valuation — Whether High Court erred in rejecting JPPH's valuation in favour of valuation of private valuer — Whether High Court erred in disregarding express condition of land use imposed by state authority

Revenue Law — Property tax — Objection to proposed annual value — Negotiation to reduce rate — Determination of annual value — Whether High Court erred in rejecting 'comparison method' and adopting 'contractor's test' in determining valuation

The appellant was a local authority. The respondent was a company involved in the business of running a private school on land held under Lot PT 39626 ('the land'). The land was 117,069 square feet and erected thereon were school buildings and sport facilities including a swimming pool. This entire entity was considered a 'holding' for the determination of annual value on which

assessment under the Local Government Act 1976 ('the Act') was based. Initially, the assessment imposed by the appellant on the holding was RM65,400 which is 6% of the annual value of RM1,090,000. Subsequently, from 1 July 1999, the assessment was increased to RM68,674.20 based on an increased annual value of RM1,144,570. This increase was attributed to the issuance of certificate of fitness for the structures and the facilities on the land. The respondent objected to this increase under s 142 of the Act. The appellant then appointed Jabatan Perkhidmatan Harta Negeri Selangor ('JPPH') as an independent valuer to conduct a valuation of the holding to determine the annual value. JPPH valued the holding and came up with the opinion that the annual value was RM3,031,000. In determining the open market value, the JPPH valuation officer had adopted the comparison method. The appellant accepted this and issued a notice to the respondent imposing an assessment of RM181,860 on the Holding commencing from 1 January 2002. The respondent again objected and the appellant decided to reduce the annual value to RM2,975,000 and the assessment was adjusted accordingly to RM178,500. Again unhappy over this, the respondent appealed to the High Court as provided for under s 145(1) of the Act. The learned judicial commissioner ('the JC') allowed the respondent's appeal. The annual value of RM2,957,000 adopted by the appellant and the assessment of RM176,500 was set aside and replaced with an annual value of RM686,400 and assessment of RM41,184. The category of land use in effect was held to be 'Building'. The JC rejected the comparison method adopted by the JPPH valuation officer and instead held that the appropriate method in determining the annual value of the holding was the contractor's test as advanced by the private valuer employed by the respondent. Hence this appeal to the Federal Court, inter alia, on the question whether the JC had erred in law in rejecting the 'comparison method' instead of the 'contractor's test'.

Held, allowing the appeal with costs here and below:

(1) The JC was wrong in rejecting the valuation of the holding by the JPHH valuation officer, in preference of the valuation by the respondent's private valuer. The JC in rejecting the valuation report of the JPPH valuation officer was in fact setting aside the proper and reasonable exercise of power and discretion of the valuation officer in determining the market value of the holding. The JC could have rejected the valuation of the valuation officer only if it was shown that the valuation officer had wrongly exercised his discretion or he had contravened the law by acting in excess of the powers given by the Act. In the instant case, the valuation officer in carrying out the valuation on the holding, had taken into account not only the express condition of the holding but also the fact that the holding was then complete among others, with five blocks of one storey building with Olympic-sized swimming pool, sports centre, an air

conditioned gallery, a multipurpose hall erected thereon and that the certificate of fitness had been issued (see para 17).

(2) The valuation officer had exercised due care and diligence in arriving at market value of the holding. Thus, the JC was not entitled to reject the JPPH valuation officer's valuation of the holding, and resorted to the valuation report prepared by the private valuer of the respondent. The JC also did not provide ample justification as to why she preferred to adopt the private valuer's valuation rather than the valuation by the JPPH valuation officer (see para 18).

(3) The JC's ruling that the express condition of the land title of the holding was for 'Building' only, and not for commercial building was an error. Under the National Land Code, the category of land use as stated and stipulated in the title is either, agricultural, residential or commercial. Different land use attracts different market value. A holding which could be erected with commercial building certainly attracts a higher premium and pricing value than an agricultural or residential holding. The express condition for the respondent's holding was 'Bangunan Perniagaan' (commercial building). The JC could not simply disregard or ignore the express condition as imposed by the state authority (see paras 19–20).

(4) The appellant was right to use the valuation of the JPPH valuation officer as the guide in determining the annual value of the respondent's holding and the annual assessment of the same (see para 21).

(5) The JC's reasons of resorting to the contractor's test, was very much influenced by the respondent's contention that they were not a profit making entity and therefore should not be imposed with a rate for a holding with commercial building on it. Firstly, the finding that the respondent was not a profit making entity was contrary to the evidence found in this case. Secondly, even if the holding was not used for commercial purposes, then more appropriate steps to be taken by the respondent was to apply for an exemption or reduction of rate as provided under ss 134 and 135 of the Act. This was not done by the respondent. The respondent was running an exclusive international school with profit as its main consideration (see para 22).

[Bahasa Malaysia summary

Perayu merupakan pihak berkuasa tempatan. Responden merupakan sebuah syarikat terlibat dengan perniagaan menguruskan sekolah persendirian di atas tanah yang dipegang di bawah Lot PT 39626 ('tanah tersebut'). Tanah tersebut berkeluasan 117,069 kaki persegi di mana bangunan sekolah dan kemudahan sukan termasuk sebuah kolam renang telah dibina di atasnya. Seluruh entiti tersebut dianggap sebagai 'pegangan' bagi menentukan nilai tahunan berdasarkan taksiran di bawah Akta Kerajaan Tempatan 1976 ('Akta'). Pada mulanya, taksiran yang dikenakan oleh perayu ke atas pegangan tersebut ialah

RM65,400 iaitu 6% daripada nilai tahunan RM1,090,000. Kemudiannya, dari 1 Julai 1999, taksiran tersebut telah dinaikkan kepada RM68,674.20 berdasarkan kenaikan nilai tahun RM1,144,570. Kenaikan tersebut berpunca daripada sijil penghunian yang dikeluarkan bagi struktur-struktur dan kemudahan di atas pegangan tersebut. Responden membantah terhadap kenaikan tersebut di bawah s 142 Akta. Perayu kemudiannya melantik Jabatan Perkhidmatan Harta Negeri Selangor ('JPPH') sebagai penilai bebas untuk membuat penilaian untuk pegangan tersebut bagi menentukan nilai tahunan. JPPH telah menilai pegangan tersebut dan berpendapat bahawa nilai tahunan adalah sebanyak RM3,031,000. Dalam menentukan nilai pasaran terbuka, pegawai penilaian JPPH telah menggunapakai kaedah perbandingan. Ianya telah diterima oleh perayu dan perayu telah mengeluarkan notis kepada responden untuk mengenakan taksiran sebanyak RM181,860 ke atas pegangan tersebut bermula dari 1 Januari 2002. Responden sekali lagi membantah dan perayu memutuskan untuk menurunkan nilai tahunan kepada RM2,975,000 dan taksiran tersebut telah diselaraskan kepada RM178,500. Sekali lagi tidak berpuashati, responden telah merayu ke Mahkamah Tinggi seperti yang diperuntukkan di bawah s 145(1) Akta tersebut. Pesuruhjaya kehakiman yang bijaksana ('PK') membenarkan rayuan responden. Nilai tahunan sebanyak RM2,957,000 yang digunakan oleh perayu dan taksiran sebanyak RM176,500 telah diketepikan dan diganti dengan nilai tahunan sebanyak RM686,400 dan taksiran sebanyak RM41,184. Kategori penggunaan tanah diputuskan sebagai 'bangunan'. PK telah menolak kaedah perbandingan yang digunakan oleh pegawai penilaian JPPH dan sebaliknya memutuskan bahawa kaedah yang bersesuaian untuk menentukan nilai tahunan bagi pegangan tersebut adalah ujian kontraktor yang digunakan oleh penilai persendirian yang dilantik oleh responden. Justeru rayuan ini ke Mahkamah Persekutuan, antara lain, tentang persoalan sama ada PK telah khilaf dalam undang-undang apabila menolak 'kaedah perbandingan' dan bukan 'ujian kontraktor'.

Diputuskan, membenarkan rayuan dengan kos di mahkamah ini dan Mahkamah Rayuan:

(1) PK telah khilaf dalam menolak penilaian pegangan tersebut oleh pegawai penilaian JPPH, dan lebih cenderung kepada penilaian oleh penilai persendirian responden. PK dengan menolak laporan penilaian pegawai penilaian JPPH pada hakikatnya telah mengetepikan pelaksanaan kuasa dan budi bicara yang betul dan berpatutan oleh pegawai penilaian dalam menentukan nilai pasaran pegangan tersebut. PK hanya boleh menolak penilaian pegawai penilaian tersebut sekiranya dapat ditunjukkan bahawa pegawai penilaian tersebut telah melaksanakan budi bicaranya dengan salah atau telah melanggar undang-undang dengan bertindak berlebihan daripada kuasa yang diberikan oleh Akta. Dalam kes ini, pegawai penilaian dalam menjalankan penilaian terhadap pegangan

tersebut, telah mengambilkira bukan sahaja syarat nyata pegangan tersebut tetapi juga fakta bahawa pegangan tersebut adalah lengkap antaranya dengan lima blok bangunan bertingkat dengan kolam renang bersaiz Olimpik, pusat sukan, galeri berhawa dingin, dewan serbaguna yang dibina di atasnya dan bahawa sijil penghunian telah dikeluarkan (lihat perenggan 17).

(2) Pegawai penilaian telah melaksanakan kewajipan berhati-hati dan ketekunan wajar dalam menentukan nilai pasaran pegangan tersebut. Oleh itu, PK tidak berhak menolak penilaian oleh pegawai penilaian JPPH terhadap pegangan tersebut dan menggunakan laporan penilaian yang disediakan oleh penilai persendirian responden. PK juga tidak memberikan justifikasi yang mencukupi tentang mengapa beliau cenderung untuk menerima pakai penilaian penilai persendirian tersebut daripada penilaian oleh pegawai penilaian tersebut (lihat perenggan 18).

(3) Keputusan PK bahawa syarat nyata geran tanah adalah untuk 'bangunan' sahaja, dan bukan untuk bangunan komersial adalah salah. Di bawah Kanun Tanah Negara, kategori penggunaan tanah seperti yang dinyatakan dan ditetapkan di dalam geran adalah sama ada untuk pertanian, kediaman atau komersial. Penggunaan tanah yang berbeza menarik nilai pasaran yang berbeza. Pegangan yang mana boleh dibina dengan bangunan komersial pastinya dapat menarik premium dan nilai harga yang lebih tinggi daripada pegangan pertanian atau kediaman. Syarat nyata untuk pegangan responden adalah 'bangunan perniagaan'. PK tidak patut dengan mudah mengendah atau menghiraukan syarat nyata seperti yang ditetapkan oleh pihak berkuasa negeri (lihat perenggan 19–20).

(4) Perayu adalah betul apabila menggunakan penilaian pegawai penilaian JPPH sebagai panduan dalam menentukan nilai tahunan pegangan responden dan taksiran tahunan pegangan tersebut (lihat perenggan 21).

(5) Sebab-sebab PK untuk memilih ujian kontraktor, adalah banyak dipengaruhi oleh hujahan responden bahawa mereka bukanlah entiti yang membawa keuntungan dan justeru tidak patut dikenakan dengan kadar bagi pegangan yang mempunyai bangunan komersial di atasnya. Pertama, dapatan bahawa responden bukan entiti yang membawa keuntungan adalah bercanggah dengan keterangan yang didapati di dalam kes ini. Kedua, sekiranya pegangan tersebut tidak digunakan untuk tujuan komersial, oleh itu langkah-langkah yang berpatutan harus diambil oleh responden untuk memohon pengecualian atau penurunan kadar seperti yang diperuntukkan di bawah ss 134 dan 135 Akta. Ini tidak dilakukan oleh responden. Responden telah mengendalikan sekolah antarabangsa eksklusif dengan keuntungan sebagai pertimbangannya (lihat perenggan 22).]

Notes

For a case on objection to proposed annual value, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) para 2487.

For cases on annual value, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) paras 137–139.

For cases on appeal, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) paras 140–146.

Legislation referred to

Local Government Act 1976 ss 2, 134, 135, 145(1), (4), (5)
National Land Code
Penal Code s 2

Appeal from: Originating Motion No MT1–25–20 of 2002 (High Court, Shah Alam)

Abdullah Abdul Rahman (Wan Haron and Aliza with him) (Wan Haron Sukri & Nordin) for the appellant.

Nicole Wee (Sharmala Balasundram with him) (Chooi & Company) for the respondent.

James Foong and Raus Sharif FCJJ:

INTRODUCTION

[1] The appellant is the local authority of Subang Jaya in the State of Selangor. The respondent is a private limited company and is involved in the business of running a private school on land held under Lot PT 39626, Mukim and District of Petaling, Selangor ('the land'). The land is 117,069 square feet and erected thereon are school buildings and sport facilities including a swimming pool. This entire entity is considered a 'holding' for the determination of annual value on which assessment under the Local Government Act 1976 ('the Act') is based. The buildings and structures on the land were completed in 1998 and in the same year the respondent occupied and utilised them.

[2] From 1 July 1999 to 30 June 2000, the assessment imposed by the appellant on the holding was RM65,400 which is 6% of the annual value of RM1,090,000. Subsequently, from 1 July 1999 to 31 December 2001, the assessment was increased to RM68,674.20 based on an increase annual value of RM1,144,570. This increase was attributed to the issuance of certificate of fitness for the structures and the facilities on the land. The respondent objected (the first objection) to this increase and posted their objection under s 142 of the Act which provides:

Any person aggrieved on any of the following grounds: A

(a) that any holding for which he is rateable is valued beyond the ratable value;

(b) that any holding value is not rateable;

(c) that any person who, or any holding which, ought to be included in the Valuation List is omitted therefrom; B

(d) that any holding is valued below its rateable value; or

(e) that any holding or holdings which have jointly or separately valued ought to be valued otherwise,

C

may make any objection in writing to the local authority at any time not less than fourteen days before the time fixed for the revision of the Valuation List

(2) All objections shall be enquired into and the persons making them shall at such enquiry be allowed the opportunity of being heard either in person or by an authorized agent. D

[3] On 14 December 2000, an objection hearing was held by the appellant but no decision was made. The appellant then appointed Jabatan Perkhidmatan Harta Negeri Selangor ('JPPH') as an independent valuer to conduct a fair and appropriate valuation of the holding for the purpose of determining the annual value which was under dispute. By this appointment JPPH is considered as the 'valuation officer' s 2 of the Penal Code as set out in s 2 of the Act which provides: E

'Valuation Officer' means any Valuation Officer appointed by the local authority. F

[4] JPPH valued the holding and came up with the opinion that the annual value as at 7 September 2001 was RM3,031,000. The appellant accepted this and issued a notice to the respondent dated 6 November 2001 imposing an assessment of RM181,860 on the holding commencing from 1 January 2002. This is based on 6% of the annual value estimated by JPPH. Dissatisfied with this, the respondent filed an objection (the second objection) with the appellant. As a result of this, on 11 April 2002, the respondent received a letter from the appellant announcing that it has decided to reduce the annual value to RM2,975,000 and the assessment was adjusted accordingly to RM178,500 to take effect on 1 January 2002. G H

[5] Again unhappy over this, the respondent this time filed an appeal by way of originating motion to the High Court as provided for under s 145(1) of the Act which states: I

Any person who having made an objection in the manner prescribed by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion …

[6] The High Court heard this appeal and on 7 May 2007, allowed the respondent's appeal and made the following orders:

(a) The annual value of RM2,957,000 adopted by the appellant on the assessment of RM176,500 is based and to commence from 1 January 2002 is set aside.

(b) The annual value shall be RM686,400 and the assessment derived there from at 6% shall be RM41,184 effective from 1 January 2002.

(c) Kategori kegunaan tanah sepatutnya adalah 'Bangunan' dan syarat nyata sepatutnya adalah untuk tujuan 'Sekolah Persendirian'.

(Translated: Category of land use in effect is 'Building' and condition in effect for 'Private School').

(d) Costs of this appeal to be paid by the appellant.

[7] To support her decision, the learned judicial commissioner gave the following grounds:

> Daripada penelitian saya terhadap penghujahan oleh peguam pihak-pihak seperti yang dinyatakan di atas, saya merasakan bahawa saya tidak dapat bersetuju dengan penghujahan peguam responden, terutamanya mengenai status bangunan Alice Smith School. Peguam responden menyandarkan keseluruhan hujahnya mengenai justifikasi penilaian kepada secebis keputusan carian persendirian di pejabat tanah yang menyebutkan status bangunan di atas hartanah tersebut sebagai 'bangunan perniagaan'. Berdasarkan ini sahaja responden telah menganggap perayu sebagai satu entiti komersial. Saya tidak bersetuju dengan kesimpulan yang dicapai oleh responden dan saya mendapati bahawa status bangunan adalah bangunan sahaja dan ia tetap kekal sebagai digunakan untuk tujuan sekolah persendirian semata-mata. Kesimpulan yang dicapai oleh responden bahawa perayu adalah satu entiti komersial telah mempengaruhi keseluruhan keputusannya mengenai hartanah tersebut. Saya amat yakin bahawa kesimpulan yang dicapai oleh responden itu adalah tidak tepat dan begitu juga dengan keputusan yang telah dibuat olehnya mengenai nilaian dan taksiran tahunan bagi harta tersebut.
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> Saya tidak menyangkal bahawa kaedah perbandingan adalah kaedah yang diterimapakai dan biasa digunakan untuk menilaikan sesuatu hartanah. Walau bagaimanapun, perbandingan yang dibuat sepatutnya melibatkan hartanah berhampiran dari jenis yang serupa.
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> Di dalam kes ini responden tidak menyangkal fakta bahawa terdapat hartanah yang betul-betul serupa dari segi penggunaan dan sifatnya berhampiran dengan hartanah tersebut.
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> Walau bagaimanapun, saya mendapati bahawa kaedah perbandingan yang dibuat JPPH dan diterimapakai oleh responden tidak menunjukkan perbandingan sama rata dari aspek jenis bangunan, tujuan bangunan dan kemudahan sebenar. Responden tidak memberikan justifikasi bagaimana pihaknya boleh mencapai kesimpulan mengenai 'nilai pulangan komersial terhad' bagi hartanah tersebut

adalah pada kadar 7% sedangkan responden menyedari bahawa nilaian bagi sekolah-sekolah swasta yang berhampiran adalah di sekitar RM43,000. Saya bersetuju dengan penghujahan peguam perayu bahawa kaedah nilaian yang sepatutnya digunakan bukan nilai hartanah dan bangunan didarab dengan kadar pulangan, tetapi ujian nilaian kontraktor, iaitu sewa bulanan yang mampu dibayar oleh pemilik.

Translation in English:

From my observation towards both counsel's submissions above, I feel that I cannot agree with the respondent's submission especially in regards to the status of the building of the Alice Smith School. The respondent's counsel based his whole submission towards the justification of the valuation on a private search report by the land office which stated the status of the building on the said land as 'commercial building'. By this reason alone the respondent had assumed the status of the appellant as being a commercial entity. I do not agree with the conclusion reached by the respondent and I find that the status of the building as building only and will remain so for the sole purpose of a private school. The conclusion reached by the respondent that the appellant is a commercial entity had influenced the respondent's whole decision towards the said property. I strongly believe that the conclusion reached by the respondent was not correct as was the decision it had made regarding the valuation and the annual assessment of the said property.

I do not deny that the comparison method is the method applicable and adopted in assessing a particular property. However, the comparison made should involve properties within its proximity and of the same type. In our case the respondent did not deny the fact that there is no property which is identical in regards to its usage and character to be compared with the said property.

Nevertheless, I find that the comparison method carried out by Jabatan Perkhidmatan Harta Negeri Selangor (JPPH) and adopted by the respondent did not show an equal comparison from the aspect of the building category/type, the purpose of the building and its actual facilities. The respondent did not justify how it reached the conclusion on the limited commercial value returns'for the said property at the rate of 7% although it realised that the valuation for other private schools within its proximity were within a RM43,000 range. I agree with the appellant's submission that the valuation method which should have been adopted is not the value of the property and building times the returns rate, but the contractor's test method, ie the monthly rental that the proprietor can afford to pay.

[8] Under s 145(4) of the Act, this decision of the High Court 'on question of fact shall be final and conclusive'. However, s 145(5) of the Act provides:

From the decision of the High Court either party may appeal on question of law to the Federal Court whose decision shall be final and conclusive.

[9] And relying on this provision, the appellant filed notice of appeal to the Federal Court and in its memorandum of appeal, seven grounds were listed. In

our opinion, it can be condensed to six since one of them overlap the other. These six grounds are:

(a) The High Court has erred in finding the respondent was not a commercial profit making entity when the respondent in its affidavit has declared that it is carrying on business of running a private school and the title to land has an express condition: 'bangunan perniagaan' (business premises).

(b) The High Court has erred in failing to appreciate the valuation conducted by JPPH as a commercial profit making entity.

(c) The High Court has erred in law in rejecting the 'comparison method' adopted by JPPH, 'valuation officer' instead of 'contractor's test' preferred by the private valuer.

(d) The High Court has erred in rejecting the 'comparison method' used by JPPH due to JPPH's failure to take into account other similar holdings in type and purpose.

(e) The High Court has erred in taking into account the assessments paid by nearby private schools RM45,000 as a comparison without taking into account the particulars of these comparables.

(f) The High Court has erred in law in accepting the respondent's valuation without stating the basis for it.

ANALYSIS

[10] From the above, we find that there is no points of law in ground 1, 2, 4, 5 and 6. They relate to a question of fact which this court by virtue of s 145(5) of the Act will not entertain. Ground 1 requires the High Court to decide on whether the respondent is a commercial profit making entity. The two factors highlighted by the appellant in its memorandum of appeal were considered by the learned judicial commissioner but were rejected in preference to other evidence. This is a finding of fact which this court should not intervene. The same goes for ground 2 which is of similar to that listed in ground 1. As for ground 4, which involves a consideration by the High Court of certain comparables necessary for the 'comparison method' this will only be relevant if the High Court has decided to adopt this method used by JPPH. But since the High Court has adopted another valuation method in its deliberation, this ground is presumptuous. Further, this involves question of fact rather than law. Ground 5 is a complaint against the learned judicial commissioner for not taking into consideration certain factors present in certain comparables for use in the valuation. But this is a question of fact, not law. As to ground 6, it involves the exercise of discretion by the learned judicial commissioner based

on facts. As such it is outside the ambit of s 145(5) of the Act. This leaves only ground 3 which focuses on the preference of the method to be used in arriving at the annual value of the holding.

[11] But before we proceed to deliberate on this issue, let us disclose the meaning of annual value. Annual value is defined in s 2 of the Act as:

> 'annual value' means the estimated gross annual value at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes:
>
> Provided that —
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> (a) In estimating the annual value no account shall be taken of any restrictions or control on rent in so far as it limits the rent which may be required by a landlord or recovered from a tenant of a holding;
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> (b) In estimating the annual value of any holding in or upon which there is any machinery used for any or all of the following purposes;
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> (i) the making of any article or part of an article;
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> (ii) the altering, repairing, ornamenting or finishing of any article;
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> (iii) the adapting for sale of any article, the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration, and for the purposes of this paragraph 'machinery' includes steam engines, boilers or other motive power belonging to such machinery;
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> (c) In the case of any land —
>
> (i) which is partially occupied or partially built upon;
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> (ii) which is vacant, unoccupied or not built upon;
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> (iii) with an incomplete building; or
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> (iv) with a building which has been certified by the local authority to be abandoned or dilapidated or unfit for human habitation,
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> the annual value shall be, in the case of subparagraph (i), either the annual value as hereinbefore defined or ten per centum of the open market value thereof at the absolute discretion of the Valuation Officer, and in the case of subparagraphs (ii), (iii) and (iv) the annual value shall be ten per centum of the open market value thereof as if, in relation to subparagraphs (iii) and (iv), it were vacant land with no buildings thereon and in all cases the local authority may, with the approval of the State Authority, reduce such percentages to a minimum of five per centum;
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> (d) Where in respect of any particular holding, in the opinion of the Valuation Officer, there is insufficient evidence to base a valuation of annual as in his opinion appears appropriate to arrive at the annual value.

[12] It can be seen from the above that in determining the annual value of any land which is partially occupied or partially built upon, it shall either the annual value as therein defined or ten per centum of the open market value thereof at the absolute discretion of the valuation officer. The valuation officer referred to under the Act is the valuation officer as defined in s 2 of the Act which means 'any valuation officer appointed by the local authority'.

[13] In the instant case, as stated earlier, the holding under value is a land with buildings erected thereon. The appellant had for the purpose of determining the annual value of the holding had chose to appoint the valuation officer from the Jabatan Perkhidmatan Harta Negeri Selangor (JPPH) to determine its open market value.

[14] It is not in dispute that in determining the open market value, the JPPH valuation officer had adopted the comparison method. The comparison method (as described by JPPH) is basically identifying comparables of sales of nearby properties which were transacted at arm's length to determine the market value of the holding and based on this market value assign an appropriate percentage to it as the return derived from this type of property. In the exact words of JPPH:

> Daripada nilai pasaran ini, kadar pulangan yang sesuai bagi jenis harta tanah berkenaan diambilkira sebagai nilaian tahun.

[15] The JPPH valuation officer in valuing the open market value of the holding had taken into account that the holding is a commercial holding with among others, classroom blocks, an Olympic-size swimming pool, sports centre and air conditioned gallery erected thereon and that the holding was used as a private and exclusive international school. The valuation officer had also made comparison to the sales of land for similar schools in the vicinity of the holding ie:

(a) Lot 3587 Hicom Glenmarie;

(b) Mont Kiara International School;

(c) Tapak Sekolah Swasta Mukim Sg Buloh, Daerah Petaling at Bandar Sri Damansara,

and had made the necessary adjustment in determining the holding open market value. The open market value of the holding as determined by the JPPH valuation officer, which was later used by the appellant as a guide to determine the annual value of the holding and its corresponding annual assessment.

[16] However, the learned judicial commissioner rejected the comparison method adopted by the JPPH valuation officer and instead held that the appropriate method in determining the annual value of the holding was the contractor's test as advanced by the private valuer employed by the respondent. The contractor's test of determining the annual value, as described by the private valuer is as follows:

> The first stage is to estimate the cost of construction of the building.
>
> The second stage is to make a deduction from the cost of construction to allow for age, absolescence and other factors in order to arrive at the 'effective capital value'.
>
> The third stage is to estimate the cost of the land according to the principle of 'rebus sic standibus'.
>
> The fourth stage is to apply the market rate or rates which money can be borrowed or invested to the effective capital values of the buildings and the land. The result is what it would cost the occupier, in annual terms, to provide the hereditament for him, rather than to lease it.
>
> The fifth stage is to consider whether the result of the fourth really represents what the hypothetical tenant would pay for an annual tenancy on the statutory terms, and to make any adjustments necessary to ensure that no higher rent is fixed as the basis of assessment than that which is believed that the owner would really be willing to pay for the occupation of the premises.

[17] The question is, was the learned judicial commissioner right in rejecting the valuation of the holding by the JPHH valuation officer, in preference of the valuation by the respondent's private valuer. With respect, we do not think so. The learned judicial commissioner in rejecting the valuation report of the JPPH valuation officer was in fact setting aside the proper and reasonable exercise of power and discretion of the valuation officer in determining the market value of the holding. No doubt it is open for the learned judicial commissioner to reject the valuation of the valuation officer but it can only be done if it can be shown that the valuation officer had wrongly exercise his discretion or he had contravened the law by acting in excess of the powers given by the Act. In the instant case, the valuation officer in carrying out the valuation on the holding, had taken into account not only the express condition of the holding but also the fact that the holding was then complete among others, with five blocks of one storey building with Olympic-size swimming pool, sports centre, an air conditioned gallery, a multipurpose hall erected thereon and that the certificate of fitness had been issued.

[18] The valuation officer also took cognisance of the fact there was no holding similar to the respondent's holding in the locality of Seri Kembangan in term of its use and nature and thus use comparative buildings within the proximity of Seri Kembangan in arriving at the fair value of the holding. In short, the valuation officer had exercised due care and diligence in arriving at

market value of the holding. Thus, the learned judicial commissioner was not entitled to reject the JPPH valuation officer valuation of the holding, and resorted to the valuation report prepared by the private valuer of the respondent. This is especially so, when the learned judicial commissioner did not provide ample justification as to why she preferred to adopt the private valuer's valuation rather than the valuation by the JPPH Valuation Officer.

[19] We are also of the view that the learned judicial commissioner's ruling that the express condition of the land title of the holding was for 'Building' only, and not for commercial building was an error. Under the National Land Code ('NLC'), the category of land use as stated and stipulated in the title is either, agricultural, residential or commercial. It is known and accepted that different land use attracts different market value. A holding which could be erected with commercial building certainly attracts a higher premium and pricing value than an agricultural or residential holding.

[20] In the instant case, the express condition for the respondent's holding is 'Bangunan Perniagaan' (commercial building). Thus, the learned judicial commissioner was in error when she ruled that notwithstanding the said express condition, 'the category of land used continued to be that of Building only for the purpose of private school' ('status bangunan adalah bangunan sahaja dan ia tetap kekal sebagai digunakan untuk tujuan sekolah persendirian semata-mata'). With respect, the learned judicial commissioner could not simply disregard or ignore the express condition as imposed by the state authority.

[21] Thus, we are of the view that the appellant was right to use the valuation of the JPPH Valuation Officer as the guide in determining the annual value of the respondent's holding and the annual assessment of the same. In fact, the appellant, on objection by the respondent had reduced the annual value as found by the JPPH Valuation Officer from RM3,031,000 to RM2,975,000. The assessment was adjusted accordingly from RM181,860 to RM178,500.

[22] In any event, the learned judicial commissioner's reasons of resorting to the contractor's test, was very much influenced by the respondent's contention that they were not a profit making entity and therefore should not be imposed with a rate for a holding with commercial building on it. Firstly, the finding that the respondent was not a profit making entity was contrary to the evidence found in this case. Secondly, even if the holding was not used for commercial purposes, then more appropriate steps to be taken by the respondent was to apply for an exemption or reduction of rate as provided under ss 134 and 135 of the Act which provides as follows:

134 Exemption from rates

When any holding or part thereof is used exclusively —

(a) as public places for religious worship;

(b) as licensed public burial grounds or crematoria;

(c) for public schools;

(d) as public places for charitable purposes or for the purposes of science, literature or the fine arts,

and not for pecuniary profit, the State Authority may at its discretion exempt such holding or such part thereof from the payment of any rate.

135 Exemption or reduction of rate

When any holding or part thereof is used exclusively for recreational, social or welfare purposes and not for pecuniary profit, the State Authority may at its discretion exempt such holding or such part thereof from the payment of all or any rates or may reduce any rate imposed on such holding or such part thereof.

[23] It is clear in the instant case that the option was not exercised by the respondent. The reason is obvious as the facts in this case shows that the respondent is running an exclusive international school with profit as its main consideration.

[24] For the aforesaid, we would allow this appeal with costs here and below with the deposit for this appeal to be returned to the appellant. The orders of the High Court are set aside. The annual value of the holding of RM2,975,000 and its corresponding annual assessment to RM178,500 as determined by the appellant is affirmed.

[25] Our sister Heliliah FCJ has read this judgment in draft and associate herself with it.

Appeal allowed with costs here and below.

Reported by Kanesh Sundrum